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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CWT Canada II Limited Partnership, an Ontario, Canada Limited Partnership; and Resource Recovery Corporation, a Delaware Corporation,

Plaintiffs,

v.

Kevin J. Bridges, an Arizona citizen; Jane Doe Bridges, an Arizona citizen; Richard Carrigan, a citizen of Nevada; Jane Doe Carrigan, a citizen of Nevada; and Danzik Applied Sciences, LLC, a Delaware Limited Liability Company,

Defendants.

And all related claims.

Case Nos.: 2:16-cv-00607-DGC
2:16-cv-02577-GMS (Consolidated)
2:17-cv-00969-JAT (Consolidated)

DEFENDANTS RICHARD CARRIGAN, ANTONY KER, AND DANZIK APPLIED SCIENCES, L.L.C.'S CONTROVERTING STATEMENT OF FACTS AND SEPARATE STATEMENT OF FACTS IN SUPPORT OF RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

AND
DEFENDANTS RICHARD CARRIGAN, ANTONY KER, AND ELIZABETH DANZIK'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants Antony Ker ("Ker"), Richard Carrigan ("Carrigan"), Danzik Applied Sciences, LLC ("DAS"), and Defendant/Counterclaimant Elizabeth J. Danzik ("Elizabeth") (collectively, "Defendants") hereby provide their Controverting Statement of Facts and Separate Statement of Facts in support of their Response to Plaintiff CWT Canada II Limited Partnership and Resource Recovery Corporation's (collectively, the "CWT Parties") Motion for Summary Judgment [Doc. 156], and Defendants' Cross-Motion for Summary Judgment.

CONTROVERTING STATEMENT OF FACTS

1. Admitted.

2. Admitted.

3. Admitted.

4. Defendants deny that the named persons “jointly and affirmatively” decided to withhold the funds, and object to the quoted language as ambiguous and undefined. (Declaration of Richard Carrigan [“Carrigan Decl.”] ¶ 9, and Declaration of Tony Ker [“Ker Decl.”] ¶ 27.)

5. Defendants deny that the named persons “jointly” decided to commingle the funds, and object to the quoted language as ambiguous and undefined. Defendants affirmatively allege that, because CWT concedes that the subject funds were commingled, CWT’s claim based on conversion of money must fail. (Carrigan Decl. ¶ 10 and Ker Decl. ¶ 28.)

6. Admitted.

7. Defendants submit that the document speaks for itself. Defendants affirmatively allege that Carrigan has denied any recollection of the document. (Carrigan Decl. ¶ .)

8. Defendants submit that the document speaks for itself. Defendants affirmatively allege that Carrigan has denied any specific recollection of the document. (Carrigan Decl. ¶ 8.)

9. Ker admits the statement. Carrigan has denied any specific recollection of the document. (Carrigan Decl. ¶ 8.)

10. Denied. (Carrigan Decl. ¶ 11 and Ker Decl. ¶ 29.)

11. Denied. (Carrigan Decl. ¶ 11 and Ker Decl. ¶ 29.)

12. Admitted.

13. Admitted.

14 Admitted

15 Admitted

16 Admitted

17 Admitted

1 18. Admitted.

2 19. Admitted.

3 20. Admitted.

4 21. Admitted.

5 22. Admitted.

6 23. Admitted.

7 24. Admitted.

8 25. Admitted.

9 26. Admitted.

10 27. Denied. Defendants affirmatively allege that this statement is vague and
11 ambiguous, and inaccurate. (Ker Decl. ¶ 30.)

12 28. Admitted.

13 29. Denied. Defendants affirmatively allege that Ker worked with Danzik and for
14 RDX on the GEM litigation, but was not involved to the same degree regarding defense of the
15 cross-claims in the New York case. (Ker Decl. ¶ 31.)

16 30. Admitted.

17 31. Admitted.

18 32. Admitted. Defendants affirmatively allege that Ker later investigated Blazar's
19 statements and found that a substantial amount of her information was untrue. (Ker Decl. ¶ 32.)

20 33. Admitted.

21 34. Admitted.

22 35. Admit that CWT was seeking documents. Defendants affirmatively allege that Ker
23 worked with Danzik and for RDX on the GEM litigation, but was not involved to the same
24 degree regarding defense of the cross-claims in the New York case, and also that Ker was not
25 then aware that CWT had paid off Blazar, who had hidden key documents. (Ker Decl. ¶ 33.)



1 36. Admitted. Defendants affirmatively allege that that Ker later learned that CWT
2 had paid off Blazar, who had hidden key documents. (Ker Decl. ¶ 34.)

3 37. Admitted.

4 38. Admitted. Defendants affirmatively allege that that Ker later learned that CWT
5 had paid off Blazar, who had hidden key documents. (Ker Decl. ¶ 34.)

6 39. Admitted.

7 40. Admitted. Defendants affirmatively allege that Ker was not during that time
8 significantly involved in or aware of the details of the lawsuit. (Ker Decl. ¶ 35.)

9 41. Denied. Defendants affirmatively allege that Ker was not during that time
10 significantly involved in or aware of the details of the lawsuit, and later learned that CWT had
11 paid off Blazar, who had hidden key documents. (Ker Decl. ¶ 36.)

12 42. Admit that CWT made the filing. Deny that Ker was “managing the litigation
13 alone,” and affirmatively allege that Ker was not during that time significantly involved in or
14 aware of the details of the lawsuit. (Ker Decl. ¶ 37.)

15 43. Admitted.

16 44. Admit discussion. Defendants affirmatively allege that Ker is not certain who
17 approached whom. (Ker Decl. ¶ 38.)

18 45. Admitted.

19 46. Admitted.

20 47. Admitted.

21 48. Admitted.

22 49. Admitted.

23 50. Admitted.

24 51. Defendants have no knowledge or information to admit or deny this allegation,
25 and therefore deny the allegation and leave the CWT Parties to their proof.



1 52. Defendants have no knowledge or information to admit or deny this allegation,
2 and therefore deny the allegation and leave the CWT Parties to their proof.

3 53. Defendants have no knowledge or information to admit or deny this allegation,
4 and therefore deny the allegation and leave the CWT Parties to their proof.

5 54. Defendants have no knowledge or information to admit or deny this allegation,
6 and therefore deny the allegation and leave the CWT Parties to their proof.

7 55. Defendants have no knowledge or information to admit or deny this allegation,
8 and therefore deny the allegation and leave the CWT Parties to their proof.

9 56. Defendants have no knowledge or information to admit or deny this allegation,
10 and therefore deny the allegation and leave the CWT Parties to their proof.

SEPARATE STATEMENT OF FACTS

Ker Declaration

13 1. Between 2008 and 2013, Ker served as chief operating officer (“CEO”) of RDX.
14 (Ker Decl. ¶ 2.)

15 2. As CEO, his responsibilities included, but were not limited to, daily
16 communications with the chief financial officer (“CFO”), maintenance of market relationships
17 with investors, and other general corporate management functions. (*Id.* ¶ 3.)

18 3. In March 2013, he was appointed chairman the board of directors of RDX, a
19 position that he maintained until May 2014. (*Id.* ¶ 4.)

20 4. As chairman of the board, Ker's primary job responsibility included facilitating
21 the relationship between RDX and CWT and CWT's Jean Noelting. (*Id.* ¶ 5.)

22 5. At no time was Ker responsible for overseeing the detailed day-to-day operations
23 of RDX. (*Id.* ¶ 6.)

²⁴ 6. Ker was also tasked with reviewing and approving RDX invoices. (*Id.* ¶ 7.)

1 7. Specifically, he would discuss invoices with RDX CFO, Kevin Bridges
 2 (“Bridges”), to determine whether expenses occurred or transactions were reported properly. (*Id.*
 3 ¶ 8.)

4 8. At all times, Ker relied on Bridges to ensure payment was made on all invoices
 5 from different parties and vendors. (*Id.* ¶ 9.)

6 9. Throughout Ker’s tenure as chairman of RDX, the board of directors regularly
 7 reviewed reports that were generated by RDX’s auditors. (*Id.* ¶ 10.)

8 10. It was Ker’s understanding and belief that the auditor’s duty and ensuing reports
 9 were meant to, and generally did, identify transactions that merited closer review. (*Id.* ¶ 11.)
 10 But those reports never stated, or were understood by Ker to suggest, that something illegal or
 11 improper had occurred. (*Id.*)

12 11. On or about July 29, 2014, the board received an audit report regarding a
 13 transaction between RDX and DAS. The report specifically made general reference to “related
 14 party transactions.” (*Id.* ¶ 12.) Specifically, the report simply stated:

15 Related Party Transactions

16 We noted that the Company enters into various transactions with multiple related parties
 17 in the normal course of business for which there is very limited documentation of the
 18 business purpose retained. Under the terms of certain related party agreements, the board
 19 of directors may audit the source transactions; however, to date that right has not been
 20 exercised. Such transactions must be reviewed and approved by the Company’s board of
 21 directors and adequate documentation retained in the Company’s books and records. In
 22 addition, such transactions should be disclosed properly in the Company’s consolidated
 23 financial statements. It is imperative that the board of directors increase their oversight
 24 over related party transactions.

25 (*Id.*)

26 12. Notably, this does not specifically reference the RDX contract with DAS. (*Id.* ¶
 27 13.)

28 13. After receiving this report, Ker spoke to Bridges to ensure that the transactions and
 29 monitoring were done appropriately under the agreement between RDX and DAS. (*Id.* ¶ 14.)



1 14. The board did investigate, and neither the board nor the auditor found any
2 improprieties regarding these transactions. (*Id.* ¶ 15.)

3 15. Ker does not recall that the auditor ever filed an objection or did not sign off on
4 the related financials. (*Id.* ¶ 16.)

5 16. Ker was one of the only people in management that was actually familiar with the
6 work DAS did for RDX for which DAS was paid. (*Id.* ¶ 17.)

7 17. In that regard, Ker observed, as to DAS' work, the manufacturing in the facilities,
8 the installation on-site, and the quality of work and equipment on the sites where the related
9 equipment was installed. (*Id.* ¶ 18.)

10 18. At no time was Ker responsible for making payments to DAS, and nor was he in a
11 position to do so, because Blazar and Bridges were, at all relevant times, responsible for
12 remitting payment using RDX funds. (*Id.* ¶ 19.)

13 19. Specifically, Ker never directed the remittance of the tax credit monies to DAS,
14 which was done by Bridges and Blazar. (*Id.* ¶ 20.)

15 20. He did, however, approve various invoices and confirmed whether payments were
16 made on the same. (*Id.* ¶ 21.)

17 21. It was also Ker's understanding and belief that the federal tax credit funds were
18 not required to be in a segregated account, and those monies were deposited into RDX's
19 operational account when they were received. (*Id.* ¶ 22.)

20 22. A majority of the work involving the New York litigation, including regarding
21 litigation strategy and participation, was done by Danzik and Blazar, together with RDX's New
22 York counsel. (*Id.* ¶ 23.)

23 23. Ker was aware of the New York lawsuit, assisted in it when asked and to the
24 degree that he was able to, but played no substantive role in it. (*Id.* ¶ 24.)

25 24. Ker's only substantial participation in the New York case was to discuss with
26 RDX's attorneys his recollection of events that occurred. (*Id.* ¶ 25.)



1 25. Ker was never named as a party to any of CWT's claims and was dismissed as a
2 party in the New York case entirely prior to those claims ever being filed. (*Id.* ¶ 26.)

3 26. Regarding CWT's Statement of Fact No. 4, Ker denies that the named persons
4 "jointly and affirmatively" decided to withhold the funds. (*Id.* ¶ 27.)

5 27. Regarding CWT's Statement of Fact No. 5, Ker denies that the named persons
6 "jointly" decided to commingle the funds. (*Id.* ¶ 28.)

7 28. Regarding CWT's Statement of Fact Nos. 10 and 11, Ker denies the contents of
8 any such conversation with Bridges. (*Id.* ¶ 29.)

9 29. Regarding CWT's Statement of Fact No. 27, Ker submits that this statement is
10 vague and ambiguous, and inaccurate. (*Id.* ¶ 30)

11 30. Regarding CWT's Statement of Fact No. 29, Ker worked with Danzik and for
12 RDX on the GEM litigation, but was not involved to the same degree regarding defense of the
13 cross-claims in the New York case. (*Id.* ¶ 31.)

14 31. Regarding CWT's Statement of Fact No. 32, Ker later investigated Blazar's
15 statements and found that a substantial amount of her information was untrue. (*Id.* ¶ 32.)

16 32. Regarding CWT's Statement of Fact No. 35, Ker worked with Danzik and for
17 RDX on the GEM litigation, but was not involved to the same degree regarding defense of the
18 cross-claims in the New York case, and Ker was not then aware that CWT had paid off Blazar,
19 who had hidden key documents. (*Id.* ¶ 33.)

20 33. Regarding CWT's Statement of Fact Nos. 36 and 38, Ker later learned that CWT
21 had paid off Blazar, who had hidden key documents. (*Id.* ¶ 34.)

22 34. Regarding CWT's Statement of Fact No. 40, Ker was not during that time
23 significantly involved in or aware of the details of the lawsuit. (*Id.* ¶ 35.)

24 35. Regarding CWT's Statement of Fact No. 41, Ker was not during that time
25 significantly involved in or aware of the details of the lawsuit, and later learned that CWT had
26 paid off Blazar, who had hidden key documents. (*Id.* ¶ 36.)



1 36. Regarding CWT's Statement of Fact No. 42, Ker did not "manage[] ... the
 2 litigation alone," and was not during that time significantly involved in or aware of the details of
 3 the lawsuit. (*Id.* ¶ 37.)

4 37. Regarding CWT's Statement of Fact No. 44, Ker is not certain who approached
 5 whom. (*Id.* ¶ 38.)

6 **Carrigan Declaration**

7 38. Carrigan served as a director of RDX from mid-2012 through the first quarter of
 8 2014. (Carrigan Decl. ¶ 2.)

9 39. He was always an outside director, was never an officer or manager of RDX, and
 10 at all relevant times resided in another state. (*Id.* ¶ 3.)

11 40. Carrigan's primary function as a director was as a member of the audit committee,
 12 and to review and approve quarterly audit reports. (*Id.* ¶ 4.)

13 41. He does not recall that he attended all meetings of the board of directors, and has
 14 no specific recollection of personally approving payment of any of the tax credit funds to
 15 Danzik or any of Danzik's companies. (*Id.* ¶ 5.)

16 42. Carrigan never received any payments from the tax credit funds. (*Id.* ¶ 6.)

17 43. During his first few months of service as a director, Carrigan was paid \$1,000.00
 18 per month, and nothing thereafter. (*Id.* ¶ 7.)

19 44. When the audit report recommending closer scrutiny of transactions involving
 20 Danzik and any of his companies was provided to RDX, in late July of 2014, it was in the final
 21 quarter of Carrigan's service as a director, and Carrigan does not recall it. (*Id.*) Carrigan denies
 22 that he discussed the auditor's warnings with Bridges. (*Id.*) Carrigan was not aware of, was
 23 dismissed early as a party to, and never participated in or controlled the New York lawsuit, as he
 24 left the company in the third quarter of 2014. (*Id.*)

25 45. Regarding CWT's Statement of Fact No. 4, Carrigan denies that the named
 26 persons "jointly and affirmatively" decided to withhold the funds. (*Id.* ¶ 9.)

1 46. Regarding CWT's Statement of Fact No. 5, Carrigan denies that the named
 2 persons "jointly" decided to commingle the funds. (*Id.* ¶ 10.)

3 47. Regarding CWT's Statement of Fact Nos. 10 and 11, Carrigan denies the contents
 4 of any such conversation with Bridges. (*Id.* ¶ 11.)

5 **Timchak Declaration**

6 48. On August 28, 2014, the judge in the New York case dismissed the sole claim
 7 against Carrigan and Ker, which claim was made by a non-party to this litigation. (Declaration
 8 of Davit Timchak ["Timchak Decl."] ¶ 15.)

9 49. A majority of the work involving the New York litigation, including regarding
 10 litigation strategy and participation, was done by Danzik and Blazar, together with RDX's New
 11 York counsel. (*Id.* ¶ 14.)

12 50. In the New York lawsuit, the court entered a default judgment and struck the
 13 defendants' defenses based on the non-production of documents in discovery. (*Id.* ¶ 16.)

14 51. It was learned thereafter that the documents in question had been hidden by RDX
 15 employee Blazar, who was then assisting CWT and who is now employed by an entity affiliated
 16 with CWT. (*Id.* ¶ 8.)

17 52. On June 14, 2018, Danzik filed in the New York case a Memorandum of Law in
 18 Support of a Motion to Vacate the Judgment, based on actions of Blazer in hiding the necessary
 19 discovery documents and information from the cross-defendants so that they could not be
 20 produced in compliance with the court's orders. (*Id.* ¶ 8.)

21 53. Blazar volunteered to head the discovery process on behalf of Danzik and RDX;
 22 ("From June 2014, and to late summer 2015, I assisted RDX with sorting, copying, and labeling
 23 a substantial amount of court discovery evidence, that was gathered, and managed by Candie
 24 Blazar ... Candie Blazar was the lead person, and she directed everyone including me on how
 25 she wanted the data organized for the file boxes.") (*Id.* ¶ 14.)



1 54. Ker has stated that the responsibility of sending the discovery to New York legal
2 counsel was Blazar's, who at the time was the CFO for RDX and had direct access to all of the
3 discovery documents. (*Id.* ¶ 8.)

4 55. Blazar has admitted that she had access to all of the documents, servers, and ESI
5 requested, and there is no evidence to dispute that she secreted away the necessary documents
6 and computer equipment. (*Id.* ¶ 8.)

7 56. RDX and Danzik's lack of access to these materials, and inability to produce
8 them, was the cause of the default judgment. (*Id.* ¶ 8.)

9 DATED this 22nd day of August, 2018.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis I. Wilenchik, Esq.

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2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on August 22, 2018, the following was served on all registered
5 parties via ECF and I emailed the attached document to the following individuals:
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